


BEFORE THE THREE PERSON
HEARING PANEL EMPOWERED
PURSUANT TO SECTION 162.961.R.S.Mo

)	
)	
Petitioner,)	
v.)	
BRECKENRIDGE R-1 SCHOOL DISTRICT,)	
Respondent.)	

OPINION AND ORDER

There is pending before this Panel in the above referenced matter a Motion to Dismiss Due Process Request filed by Respondent Breckenridge R-1 School District (the "District"). Respondent maintains that Petitioners' request for due process should be dismissed because Petitioners have failed to raise an issue that is justiciable under the Individuals with Disabilities Education Act ("IDEA") and have failed to state a claim under the IDEA.

On October 4, 1999, a Diagnostic Staffing was held to determine whether is eligible for special education services under the IDEA. After evaluation, the team determined that did not meet the criteria to be diagnosed as learning disabled. , by her signature, indicated that she agreed with that conclusion. On November 3, 1999 the Missouri Department of Elementary and Secondary Education

("DESE") received a request for due process from

Significantly, the request



does not claim that the eligibility determination is incorrect.

Rather, [REDACTED] raises

what the District claims are several non-IDEA related issues including:

1. Schools' Diagnostic Summary does not note or indicate that was taking 30 mg. of Adderall to do the testing.
2. School Policies are to lower children's grades for missing school. education requires excessive medical appointments for monitoring.
3. School Policy for Athletics punishes him for missing school or practice.
4. ~is being punished for ADHD Behavior and Behaviors due to Medicine (stimulant).
proposed resolution is "[t]o put a 504 plan in place."

Special education due process hearings are state proceedings. *See Z.A. v. San Bruno Park Sch. Dist.*, 165 F.3d 1273, 1275 (9th Cir. 1999). A due process matter pursuant to RSMo. § 162.961 is governed by the Missouri State Plan for Part B of the Individuals with Disabilities Education Act and the Missouri Administrative Procedures Act ("APA"), RSMo. ch. 536. The Missouri APA specifically provides that [n]othing contained in sections 536.060 to 536.095 shall be construed (1) to impair the power of any agency to take lawful summary action in those matters where a contested case is not required by law." RSMo. § 536.060. In addition, the Missouri APA clearly contemplates that administrative bodies have the authority to render decisions without a contested case hearing. *See* RSMo. § 536.150; *State of Missouri ex rel. Leggett v. Jensen*, 318 S.W.2d 353 (Mo 1958) (en banc) (acknowledging that a hearing is not required in all cases in which administrative bodies may render determinations). Accordingly, due process panels convened pursuant to RSMo. § 162.961 have the legal authority to summarily dismiss claims that are untimely or otherwise nonjusticiable. *See, a g., orders in Fort Zumwalt School District (SEA 1999); West Plains School District (LEA and SEA 1996);*

Clearwater School District (SEA 1997); *Cassville R-I School District* (SEA 1999).

Under the IDEA, a school district is required to provide a "free appropriate public education" to all children with disabilities. 20 U.S.C. § 1412(a)(1). Moreover, under the IDEA, a school district must prepare a written individualized education program ("IEP) for each student eligible for educational services. 20 U.S.C. §§ 1401(8), 1414(d)(2)(A). Parents who are dissatisfied with specified aspects of the child's education program may seek a due process hearing before an impartial due process panel. 20 U.S.C. § 1415(b)(6)

The IDEA provides that, via a due process hearing, parents must have "an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." *Id.* Due process requests regarding these issues must include a "description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts, relating to the problem." 34 C.F.R. § 300.507(c)(2)(iv).

Accordingly, because the IDEA limits those matters which may be the subject of a due process hearing to the enumerated four areas, a parent may not seek an IDEA due process hearing with respect to any other matters relating to the child's education. *See Payne v. Bd of Educ. Cleveland City Schools*, 21 IDELR 923 (E.D. Tenn. Nov. 3, 1994) (finding that student failed to prove that a dispute existed at the time of the due process hearing request); *Bd. of Educ. of the Ellenville Cent. Sch. Dist.*, 21 IDELR 235 (New York State Review Officer May 4, 1994) (impartial hearing officer dismissed parents' due process request as moot due to passage of time and absence of any disagreement about the student's educational program and state review officer affirmed); *Highland*

Park Indep. Sch. Dist., 22 IDELR 389 (Texas Hearing Officer Dec. 8, 1994) (granting school district's motion to dismiss due process hearing on grounds that none of parent's complaints raised justiciable issues under the IDEA and finding that parent's claims with respect to the way student's IEP meeting was conducted and with respect to district's refusal to provide student with gym locker were not issues subject to due process); *Ventura County Office of Educ.*, 508:129 EHLR (Calif. Hearing Officer April 30, 1986) (dismissing due process request for lack of jurisdiction because parent failed to raise issues subject to due process review when parent sought due process with respect to transfer of student to different classroom with different teacher and teachers used different methodologies).

For example, in *In re Michael T* 506:333 EHLR (Washington hearing officer April 3, 1985). the administrative law judge dismissed the parent's case for due process for lack of merit and failure to raise justiciable issues. In that case, the parent of a 15year-old blind student alleged that the school district did not comply with the student's IEP because it allegedly failed to promptly return his corrected math homework, to braille one assignment and to arrange for the participation of all teachers and aides in the student's IEP meetings. In dismissing the due process request, the administrative law judge (ALJ) found that the parents, rather than the district, were responsible for problems with correcting the student's homework. Moreover, since the district brailled most assignments, the ALJ determined that it was not unreasonable for the district to not braille one assignment when a reader was available to the student. Finally, the ALJ concluded that the attendance of all aides at IEP meetings was not required under the law.

As in the above referenced cases, Petitioners have failed to demonstrate that they

are seeking due process over issues that are justiciable against Breckenridge R-1 School

District under the IDEA via a due process hearing. Significantly, there is no claim by Petitioners that the conclusion of the Diagnostic Staffing is incorrect. It is axiomatic that there can be no issues regarding educational placement or the provision of a fair appropriate public education (FAPE) if the student is not eligible for services under the IDEA. Furthermore, there is no claim in Petitioners due process request that the evaluation was flawed. Most notably, the Petitioner's proposed resolution, cited supra, requests a "504" plan. It is well established that the hearing panels in Missouri clearly do

not have jurisdiction over claims brought pursuant to the Rehabilitation Act.

ORDER

Respondent's Motion to Dismiss Due Process Request is granted in accord with the reasoning set forth supra.

SO ORDERED.

Signed this 31st day of July, 2000 in the County of St. Louis, State of Missouri, by:

Gerard A. Fowler
Hearing Panel Chair